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In re Application of NEUSS
U.S. Application No.: 09/806,758
Int. Application No.: PCT/EP00/04658
Int. Filing Date: 22 May 2000
Priority Date: 20 May 1999
Attorney Docket No.: THIE.0009USA
For: RADIALLY EXPANDABLE VESSEL
SUPPORT

DECISION

This is in response to applicant's "Petition to Correct Inventorship Under 37 CFR §1.48(a)" filed 09 August 2001, which is being treated as a petition under 37 CFR 1.497(d). The requisite petition fee has been provided.

BACKGROUND

On 22 May 2000, applicant filed international application PCT/EP00/04658, which claimed priority of an earlier Germany application filed 20 May 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 30 November 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 20 December 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 November 2001.

On 03 April 2001, applicant filed national stage papers in the United States. The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 09 August 2001, applicant filed the present petition along with an executed declaration.

DISCUSSION

The declaration filed 09 August 2001 lists Michael Orlowski as an additional inventor beyond that indicated in the international application. The DO/EO/US has not received a Notification of the Recording of a Change (Form PCT/IB/306) which indicates that Orlowski has been added as an inventor.

37 CFR 1.497(d) (effective 07 November 2000) states,

If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by: (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part; (2) the processing fee set forth in § 1.17(i); and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

With regard to item (1) above, the requisite statement has been provided.

With regard to item (2) above, the requisite fee has been provided.


With regard to item (3) above, in situations where an assignee consents to a correction of inventorship, ownership of the application must be established. See MPEP 324. Under 37 CFR 3.73(b), ownership is established by documentary evidence of a chain of title from the original owner to the assignee. In the present case, the statement by Orlowski states that EuroCor GmbH is the assignee of the present invention. However, the assignee has not established ownership of the invention as set forth in 37 CFR 3.73(b).

CONCLUSION

For the reasons above, the petition is DISMISSED without prejudice.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time may be obtained pursuant to 37 CFR 1.136(a). Failure to timely file a proper response will result in ABANDONMENT of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.


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